

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN C. VOTTA, JR. Plaintiff,)	
)	
)	
)	CA. No. 04-10135-GAO
v.)	
)	
MARTHA COAKLEY, et al.)	
Defendants)	
)	

DISTRICT ATTORNEY COAKLEY’S MOTION TO DISMISS

Defendant Martha Coakley, Middlesex District Attorney, moves for dismissal of this action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). As fully detailed in the accompanying memorandum, the plaintiff seeks injunctive relief under 42 U.S.C. § 1983 for alleged Constitutional violations and invokes 28 U.S.C. § 2283 as authority to intervene in potential state court proceedings. Plaintiff, who has yet to file a petition seeking extraordinary relief, seeks this court’s intervention to prevent Coakley from responding to this potential motion with a single justice of the Supreme Judicial Court. The petition must be dismissed because plaintiff has no standing, there is no case-or-controversy between these parties and § 1983 cannot be used to advance what is in effect a habeas corpus challenge.

For the foregoing reasons and those detailed in the accompanying memorandum, District Attorney Coakley respectfully requests that this action be dismissed with prejudice.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ David M. Lieber

David M. Lieber (BBO # 653841)

Assistant Attorney General

Criminal Bureau

One Ashburton Place

Boston, Massachusetts 02108

(617) 727-2200 ext. 2827

Dated: March 18, 2004

ATTORNEYS FOR
DISTRICT ATTORNEY COAKLEY